

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 8, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Scott J. Orr (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 96, SB 97, SB 235, 3/3/1999
Executive Action: HB 158 Move to Subcommittee

HEARING ON SENATE BILL 97

Sponsor: Sen. Spook Stang, SD 36, presented SB 97. He distributed the Summary of Findings and Recommendations Report to the 56th Legislature from the Legislative Environmental Policy Office, **EXHIBIT (nah52a01)**, a Table of Contents for the bill addressing each section, **EXHIBIT (nah52a02)**, and Changes from Current Law-Third Reading Copy, **EXHIBIT (nah52a03)**. He said the bill addressed ways to deal with growth by providing predictability. Managing growth is a priority according to a poll. Copies of newspaper clippings were distributed. **EXHIBIT (nah52a04)** This bill would also provide predictability to developers by requiring communities to adopt growth policies. It could encourage growth in certain areas. **{Tape : 1; Side : A; Approx. Time Counter : 0 - 10.1}**

Proponents: Sen. Vicki Cochiarella, SD 32, spoke in favor of the bill. She described the two year study process where she served as co-chair. She referred to the Planning for Growth booklet developed by the EQC and encouraged the committee members to look at it. **EXHIBIT (nah52a05)**

Jerry Sorenson, a public member of the Environmental Quality Council and co-chair of the subcommittee that worked on the growth study. There is a need to debate about planning for growth overall rather than addressing one subdivision at a time. He pointed out the bill was coupled with a funding bill which would provide some funds to help counties work on growth policies. **{Tape : 1; Side : A; Approx. Time Counter : 13.1 - 16.1}**

Steve Snezik, representing the Montana Association of Realtors, spoke in support of SB 97 and the changes it makes to the subdivision and planning act. Changing the terminology from "Master Plan" to "Growth Policy" is a good change. Master plans sometimes carry negative connotations and growth policy implies a community solution. He pointed out that landowners need to know what they can do with their land. **{Tape : 1; Side : A; Approx. Time Counter : 17.6 - 18.2}**

Dennis Lay, a Montana Registered Land Surveyor from Helena, described how the bill had some problems in the minor subdivision review but had been corrected and he was now in support of the bill. **{Tape : 1; Side : A; Approx. Time Counter : 18.2 - 19.1}**

Linda Stahl, representing the Montana Association of Planners, spoke in support of the bill. **{Tape : 1; Side : A; Approx. Time Counter : 19.1 - 19.4}**

Mike Kadas, Mayor of Missoula, presented written testimony and an amendment that would address specific areas rather than an entire county. **EXHIBIT(nah52a06)** He said land and property rights had the potential for a lot of antagonism. This would allow for the development of neighborhood plans. As growth is anticipated the neighborhoods could come to the local government for dialogue and would have an incentive to do planning. **{Tape : 1; Side : A; Approx. Time Counter : 19.4 - 30}**

Byron Roberts, Montana Building Industry Association, spoke in support of the bill. He felt good planning was essential in the development of affordable housing. Development must be guided within contiguous urban areas, maintain open space while allowing for location of choice. **{Tape : 1; Side : A; Approx. Time Counter : 30 - 30.7}**

Anne Hedges, representing Montana Environmental Information Center, supported the bill. She presented written testimony. **EXHIBIT(nah52a07)**

Sen. Lorents Grosfield spoke in support of the bill. He explained when he was on the EQC the focus was on planning rather than subdivisions. Community planning will make subdivisions easier and more meaningful. **{Tape : 1; Side : A; Approx. Time Counter : 34.8 - 36.6}**

Gavin Anderson, Program Manager for the Technical Assistance Program at the Department of Commerce, spoke as a proponent. **{Tape : 1; Side : A; Approx. Time Counter : 36.6}**

Janet Ellis, representing Montana Audubon, presented written testimony in support of the bill. **EXHIBIT(nah52a08)**

Denise Roth Barber, representing the Montana Sierra Club, spoke in support of the bill. She said land use planning had become a high priority for their members. This is crucial for open space and agricultural land preservation which are both under increasing threat from uncontrolled growth. **{Tape : 1; Side : A; Approx. Time Counter : 37.5}**

Opponents: None.

Informational Witness: Rep. Kim Gillan discussed her views. She was a member of the growth subcommittee in EQC that developed this bill. She pointed out the importance of recognizing that a one size fits all solution may not be appropriate for the state in the issue of growth planning. She was concerned that what is appropriate for the western part of the state where there has been rapid population growth will not be appropriate or relevant

to what happens in the eastern part of the state where there have been population declines. **{Tape : 1; Side : A; Approx. Time Counter : 37.5 - 41.8}**

Questions from Committee Members and Responses: Rep. Erickson asked if this could be fixed for eastern Montana. Rep. Gillan said she did not like changing master planning to growth planning which she did not feel were the same thing. **{Tape : 1; Side : A; Approx. Time Counter : 41.8 - 43}**

Rep. Bitney asked for an explanation of the planning process and individual property rights where a property owner may become restricted to what they can do with their land. Steve Snezik replied that was a concern. The planning process should not be a regulatory process. The plan should not be a regulatory document. The zone that implements the plan should be the regulations that guide the land use. The process comes about through the community sitting down and working out some of the questions. **{Tape : 1; Side : A; Approx. Time Counter : 43 - 47.1}**

Rep. Ewer asked about the timing. Sen. Stang replied the date would be after the next Legislature meets. If the cities find this is a problem they will be able to come to the next Legislature to ask for an extension of time. This only applies to the cities that already have a plan. It is optional to those who have no plan. **{Tape : 1; Side : A; Approx. Time Counter : 43 - 48.5}**

Rep. Tuss said there was some concerns about the timing. She asked if the 3-5 year time was amenable. Mayor Kadas replied the timing was not the concern but the area was. He pointed out it made more sense to do a piece at a time since parts of the community recognize that they want to see some changes. If you want to do a thorough job at the county level, ten years is better. The county plan is just an umbrella. The real detailed plans happens in the neighborhood and community plans. He said a shorter period of time may keep involvement out of a full blown plan if they are forced to do a county wide plan. He recommended an area by area plan to let the people drive the process. He said ten years may be too long, maybe five would be better. A requirement to do the plan county wide would be asking for trouble. **{Tape : 1; Side : A; Approx. Time Counter : 48.5 - 50.1}**

Rep. Story asked about those who had a master plan now would they need to redo them to meet the new criteria. Sen. Stang replied they would not plus the extension of time to 2001 there would be time to implement a plan. Jeanne Marie Sowgney, EQC growth planning subcommittee, referred to page 29 regarding language that said any Master Plan adopted before October 1, 1999,

jurisdictions would have another two years after that to implement any regulations they want under the existing master plan. Those don't change because they adopt a growth policy.

{Tape : 1; Side : A; Approx. Time Counter : 50.1 - 53.3}

Rep. Story asked about concerns regarding neighborhood plans allowing exclusionary zoning and could this already happen under citizen initiated zoning. Mr. Snezik replied it could. The benefit with the bill would be that any of the neighborhood plans that were initiated in a local area would then have to comply with the Master Plan or Growth Policy. There would be a check and balance on what was done at the neighborhood level. **{Tape : 1; Side : A; Approx. Time Counter : 54.1 - 55.2}**

Rep. Ewer asked if the Kadas amendments considered incrementalism. Sen. Stang commented the problem is the neighborhood plans might be in conflict with the master plans. The master plan might want growth in this area but the neighborhood plan would exclude that plan and actually force the growth into an area where the growth policy was trying to move it. **{Tape : 1; Side : A; Approx. Time Counter : 54.1 - 59}**

Rep. Ewer asked why the neighborhood growth policy could not be addressed. Jerry Sorenson replied this was thoroughly addressed in the growth policy subcommittee meetings. You might be able to get some planning in some neighborhoods on the ground easier if you don't have to put them in context of what the overall growth policy of the county is. However, that may not take into account the growth policy for the larger community and the larger issues that need to be addressed in the process. The way the law reads now is that master plans have to cover the entire jurisdiction. It is critical that any planning has to tie back to the larger jurisdiction so that you deal with your county wide or community wide goals - transportation, utilities, etc. Otherwise you run the risk of a lot of neighborhoods getting together and doing their planning and their zoning for what they want in their neighborhoods and pushing all the unwanted kinds of development into areas of the county that haven't got their act together to do a neighborhood plan. There is not this community benefit approach to planning which should be comprehensive. **{Tape : 1; Side : A; Approx. Time Counter : 59 - 61.6}**

Rep. Hurdle said she was concerned about sprawl and the need to coordinate with goals and objectives in a growth policy. Mayor Kadas agreed coordination was important and did happen because there was overriding zoning and subdivision regulation and ordinances and elected officials. There isn't a neighborhood plan that doesn't have to be approved by the whole council or whole commission. They look at it at the perspective of the

context of the larger county. However, it is difficult to do in a practical manner. You tell one area they have to live with the same rules as another, which may have nothing in common. **{Tape : 1; Side : A; Approx. Time Counter : 61.6 - 64.3}**

Mayor Kadas pointed out if there was no plan or an outdated plan it did not mean that growth wasn't going to happen. You are trying to avoid unplanned growth. That is what brings the neighborhoods to the table, to the commissioners, and gets them involved in the process. There is strong, local property rights on the parcels that exist and people are going to subdivide those. There is going to be growth in either case, the question is do you want a plan or not. **{Tape : 1; Side : B; Approx. Time Counter : 1 - 2.6}**

Rep. Erickson asked about exclusionary plans and neighborhood zoning as they did not seem connected. He pointed out the Kadas amendments defined neighborhoods of 5,000 acres and 1,000 people. Snezik clarified that neighborhoods were not always exclusionary. He was not sure defining neighborhoods in this manner was right. The umbrella of a greater growth policy by which a neighborhood plan must comply is the one check and balance that is absolutely crucial in the whole neighborhood planning process. Without goals and objectives on the county wide level it was not known how neighborhood plans are going to be developed and would be beneficial to the community in the communities goals and objectives as a whole. **{Tape : 1; Side : B; Approx. Time Counter : 2.6 - 5}**

Rep. Story asked if the growth policy would allow for differences in areas. Sorenson replied he had done more neighborhood planning when he was a public planner in Lake County. He saw neighborhood planning under the context of an umbrella comprehensive plan. He pointed out Missoula County could fix their master plan after 2001 or they could break their jurisdiction into not only a county jurisdiction but a city-county jurisdiction and pull in those other areas. The overall plan, followed by the neighborhood plans is the best methodology to do responsible planning in Montana. He felt the bill laid out the framework to accomplish that. **{Tape : 1; Side : B; Approx. Time Counter : 7.2 - 11.1}**

Rep. Story pointed the problem even in the subdivision law was it was geared to those places that are experiencing a lot of growth. To do anything any place in Montana you still have to go through the process whether it be a 20 acre tract out in the NE corner of Daniels County. To allow a county to do any zoning you have to go through a whole planning process when it may be only one small area they need to work with. Sorenson pointed out the bill was

not mandatory. If there were specific areas they were concerned about, the provisions in the subdivision law may be adequate to deal with it. Or they could build a plan for that county that is very general and then could be followed up with a more site specific or neighborhood plan. This sets up the framework and gets the neighbors to deal with local issues at the local level but with some consideration for the goals of the county. This bill is optional and there may be a funding source for counties to do this if they want to exercise that option which will come with some technical assistance. It would be a benefit to a lot of eastern Montana counties to do some planning and get some funding help. If they are declining in growth, that issue should be addressed as well. **{Tape : 1; Side : B; Approx. Time Counter : 7.2 - 14.3}**

Closing by Sponsor: Sen. Stang closed. He stressed that the bill was not mandatory but optional. A growth policy can help plan ahead. The current process does not work but is reactionary. **{Tape : 1; Side : B; Approx. Time Counter : 14.3 - 24}**

HEARING ON SENATE BILL 96

Sponsor: Sen. Spook Stang, SD 36, presented SB 96. He explained the bill dealt with zoning. The bill could be called the in-fill bill. It changes some of the requirements to zoning protests to make it easier for development to be inside of the city or inside of areas rather than provide for the sprawl that exists today. The EQC found that the development of areas where services already exist is usually more cost effective than random development and concluded the development in and around urban areas should be encouraged. They also concluded there are a number of disincentives to develop in and around urban areas including some outdated zoning regulations. Traditional zoning regulations can sometimes discourage cluster development or other innovative designs because they limit density or separate different types of land uses. He discussed amendments put on by the Senate. **EXHIBIT(nah52a09) {Tape : 1; Side : B; Approx. Time Counter : 23 - 28.3}**

Proponents: Jean Marie Songney, representing the Growth Management Subcommittee from EQC, said the subcommittee tried to address those situations where one or two people could protest a zoning change and it would take a huge, super majority to override that. It took 75% prior to this change to override what one person may bring up as a protest. This will increase the number of people that would have to protest a zoning change and lowers the threshold over the number of people on the zoning body

that could override that. It makes it a little bit easier to do in-fill development. She pointed out the concern that came up in the Senate was that people who were absent from the governing body were essentially a no vote. They wanted to have voting members present. She described amendments and the reasoning behind them. **{Tape : 1; Side : B; Approx. Time Counter : 28.3}**

Lee Arbuckle, representing the League of Women Voters, spoke in favor of the bill. He presented written testimony.

EXHIBIT (nah52a10)

Informational Witness: Kirwin Jensen, Planning Director for the City of Billings, presented written testimony and charts. He explained the quadrant method used by the City of Billings.

EXHIBIT (nah52a11) He suggested an amendment to leave the 20% requirement intact and require 2/3 of the city council to overthrow a valid protest rather than just 3/5 as proposed.

{Tape : 1; Side : B; Approx. Time Counter : 34.5 42.9}

Steve Snezik, representing the Montana Association of Realtors, spoke in support of the bill. He stated if we want to prevent urban sprawl we need to encourage in-fill development, which cannot be done without a zone change. This bill makes a zone change easier. A zone change should be hard but it shouldn't be impossible. A developer would follow the path of least resistance. If in-fill development is close to impossible a developer will say forget it and move out into the county. **{Tape : 1; Side : B; Approx. Time Counter : 43 - 44.2}**

Mike Kadas, Mayor of Missoula, supported the bill as written. He pointed out the bill did four things. It raises the trigger, it lowers the hurdle from 3/4. 3/4 makes it nearly impossible. When you don't get good proposals because developers know they are going to go through this tortuous process and probably get it killed in the end so they don't even make proposals. He suggested changing voting members to members present and voting. He described the problems with current law where a member might not be present and then they are counted as a no vote. The quadrants issue is confusing, nebulous and interpreted differently by different cities. The bill would encourage in-fill. A neighborhood is larger than the area within 150 foot from a parcel. This takes some power away from essentially one neighbor. One neighbor can trigger a protest. A property owner brings in the proposal. They have become so restricted because of this law that they do not have a reasonable ability to do what they like to with their property. There needs to be some limits but now the limits don't allow us even to try. **{Tape : 1; Side : B; Approx. Time Counter : 43 - 47.8}**

Byron Roberts, Montana Building Industry Association, said that currently one adjoining neighbor could make it virtually impossible to enact a zone change. Current provisions discourage increased densities in urban areas and promote sprawl. Modifications of the 2/3 rule will also provide incentives for urban in-fill. Housing developments in and contiguous to urban areas should be encouraged because services can be provided more efficiently in urban settings. HB 96 will also remove barriers to the creation of planned unit developments in some communities in Montana. In order to create a planned unit development a zone change is required which now is virtually impossible. Planned unit developments allow innovative urban design coupled with increased densities and thereby providing housing affordability. **{Tape : 1; Side : B; Approx. Time Counter : 47.8 - 48.8}**

Alec Hanson, Montana League of Cities and Towns, spoke in favor of the bill. He said during the League's annual conference the bill was debated and supported. Zoning changes should be difficult but not impossible. The idea of encouraging in-fill development and allowing people to do what they want with their property is a basic principle. **{Tape : 1; Side : B; Approx. Time Counter : 48.9 - 49.5}**

Opponents: Chris Gingerelli, President of the Missoula City Council and representing the Missoula City Council, spoke in opposition to the bill. She presented written testimony. **EXHIBIT(nah52a12) EXHIBIT(nah52a13)** She pointed out the changes would make it easier for a potential minority membership of city councils and commissions to impose their will upon the public. She read the petition for the record. **{Tape : 1; Side : B; Approx. Time Counter : 49.5 - 50.2}**

Lou Ann Crowley, a member of the Missoula City Council, spoke in opposition to the bill. She described her personal experience of a proposal to her neighborhood that had strong opposition but they could not make the 40%. People would feel that they could not participate in a meaningful way in decisions that involve their property. She believed changes coming meant people would have to move in a little bit closer, move over to make room. Their rights should be protected regarding decisions that shape their lives, their property rights and their future property values. She believed SB 96 was a short sighted attempt to stem urban sprawl and the consequence would be to weaken citizen rights to be involved in determining the future of their neighborhoods. **{Tape : 2; Side : A; Approx. Time Counter : 1 - 4.2}**

Julia Polido, representing Don't Gamble with the Future, spoke against the bill. She said it has been impossible to oppose

casinos in residential areas even with the current regulations. She pointed out a smaller number of members on the commission could be making a decision for the community. **{Tape : 2; Side : A; Approx. Time Counter : 4 - 7.2}**

Jack Doty, representing University Area Homeowners, spoke against the bill. He pointed out there were people moving into the suburbs as urban extension not sprawl. He distributed a handout regarding adverse effects on urban neighborhoods.

EXHIBIT (nah52a14) He described how easy it was to get proposals passed through the city council when only a quorum was present. This bill would give the governing body more power, more central government. This promotes in-fill, filling up every empty space around and then there is no open space. This promotes in-fill, density and crowded areas, and threatens the purpose of residential areas. Population density and crime rates are correlated. He distributed letters in opposition to the bill.

EXHIBIT (nah52a15), EXHIBIT (nah52a16), EXHIBIT (nah52a17)

Bill Clarke, representing Missoula Neighborhood Network, presented written testimony against the bill. **EXHIBIT (nah52a18)**

Informational Witness: James Carculous, a resident of the University District in Missoula, testified. He said he was a strong growth management advocate and also a property rights advocate. He read a letter to the editor from the Missoulian which stated the growth management plan could be arbitrarily overruled by 20% of the adjacent property owners on any zoning issue. Changing the trigger mechanism to 40% of the adjacent owners could only succeed if the subdivision and growth management statutes were overhauled. A suggestion would be if the zoning protest bill could include a mechanism to acquire property through a conservation special improvement district if this is impacting their particular properties. If this measure stands alone without any accompanying legislation then it is a disservice to private property owners who are impacted by zoning changes. He made suggestions such as clarifying zoning districts. **{Tape : 2; Side : A; Approx. Time Counter : 20.7 - 26.5}**

Craig Sweet, a private citizen and former member of the Missoula City Council, spoke against the bill. He said this was more than just an in-fill bill. He described a casino project that would take 40% of the property owners in the area to override. He pointed out the bill did not guarantee quality development or innovative development. In order to get good quality development you need incentives to get the developer to sit down with the neighbor to discuss their problems and their concerns. He described design standards that would help guarantee a quality

development. He asked the committee when considering changes to make in-fill development easier to keep in mind there is not a support system in all the communities to guarantee the quality of the in-fill development. **{Tape : 2; Side : A; Approx. Time Counter : 26.5 - 32.4}**

Questions from Committee Members and Responses: **{Tape : 2; Side : A; Approx. Time Counter : 33 - 56; Comments: members discussed amendment suggestions}**

Closing by Sponsor: Sen. Stang closed. He asked that options be considered.

HEARING ON SENATE BILL 235

Sponsor: Sen. Jack Wells, SD 14, presented SB 235. He said the bill would help preserve the long term integrity of some of the most important municipal water rights and water supplies in the state. The bill is limited to certain water rights considered A-Closed. Municipalities will eventually need these waters. The bill does not give preference to municipal water rights like some other states have done. These rights could still be challenged if the municipalities did not do anything that indicated their future plan to use these water rights, but if they met some of the criteria then it was indicative of their intent to use those waters. The long term is the concern due to population growth and treatment of the water and changes in regulatory requirements and public need, sometimes unpredictable court decisions. This is why a certain level of protection was felt appropriate for these systems. **{Tape : 2; Side : B; Approx. Time Counter : .5 - 6.6}**

Proponents: Arvid Hiller, representing Mountain Water Company of Missoula, Montana, was in favor of the bill. He had written testimony. **EXHIBIT(nah52a19)** **{Tape : 2; Side : B; Approx. Time Counter : 6.6 - 13.4}**

Carl Stetzner, Chief Executive for Anaconda-Deer Lodge County, spoke as a proponent. He presented written testimony regarding their need for water. **EXHIBIT(nah52a20)**

Phil Forbes, Director of Public Works for Bozeman, spoke as a proponent of the bill. He described the water treatment process and the need for future planning. **{Tape : 2; Side : B; Approx. Time Counter : 14.7}**

Mike Greyson, County Attorney for Anaconda-Deer Lodge County, spoke in favor of the bill. He provided written testimony. SB

235 would give assurances that would allow them to know exactly what actions were required so that municipal water rights would not be deemed abandoned in some future court action.

EXHIBIT (nah52a21)

{Tape : 2; Side : B; Approx. Time Counter : 14.7 - 21}

Rep. Cindy Younkin, HD 40, an attorney who practices water law, spoke in support of the bill. She said Montana water law was "use it or lose it". You can abandon a water right if you don't use it, but non use alone is not sufficient to abandon a water right. You have to have an intention to abandon that water right. The bill would put municipal rights on A-Closed streams in situations of showing they were not abandoned and potentially save thousands of dollars of litigation expense. **{Tape : 2; Side : B; Approx. Time Counter : 21 - 24.7}**

Opponents: None.

Informational Witness: Jack Stultz, Division Administrator for the Water Resources Division in DNRC, said he was available for questions. **{Tape : 2; Side : B; Approx. Time Counter : 24.8 - 25.4}**

Questions from Committee Members and Responses: **{Tape : 2; Side : B; Approx. Time Counter : 25.6 - 41}**

Closing by Sponsor: Sen. Wells closed. He distributed a copy of the statute listing the 15 drainages in the A-Closed system.

EXHIBIT (nah52a23) {Tape : 2; Side : B; Approx. Time Counter : 41 - 42.8}

EXECUTIVE ACTION ON HOUSE BILL 158

Rep. Ohs **MOVED HB 158 OFF THE TABLE.** Rep. Raney pointed out the need to pass the bill since some of the tanks could go for twenty years without an inspection.

The question was called. The motion **PASSED** 18-1 with Rep. Hurdle voting no.

Chairman Tash assigned Reps. Ohs, Dale, Stovall, Harper and Erickson to a subcommittee to work on HB 158.

ADJOURNMENT

Adjournment: 6:44 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah52aad)